

CHAPTER 11 – GUARDIAN *AD LITEM*

STATUTORY REFERENCES: **RSA 173-B:6 (Guardian *ad litem*)**
 RSA 490:26-f (Guardian *ad litem* Services)

CROSS REFERENCE: **Chapter 7 - Final Hearing**

INTRODUCTION

In certain very limited circumstances, when considering an order for custody and/or visitation of the parties' children, the court may appoint a guardian *ad litem*.

COMMENT

The person must be certified as a guardian *ad litem*. Currently certification is made through the offices of the Administrative Judges of the District or Superior Court. It is anticipated by the end of 2002 these certifications will be done by a guardian *ad litem* Board.

A. DETERMINATION OF NEED FOR GUARDIAN *AD LITEM*

A guardian *ad litem* is not appropriately appointed in every domestic violence case in which the question of visitation or custody is raised. The court should be careful to advise the parties of the need to seek superior court orders in the event a legal separation or divorce or custody action is contemplated. The court should also carefully remind the parties that the domestic violence process is not a permanent process. The final order expires after one year. Nevertheless, in certain limited cases, such an appointment is appropriately made.

PROTOCOL 11-1

The following considerations by the court are suggested for review prior to appointment:

- a. Whether the physical/emotional safety of the children is at issue;
- b. Whether the parties will be able, with or without the assistance of the court, to

- reach agreement on visitation/custody issues;
- c. Whether the parties are represented by counsel;
- d. Whether a divorce, legal separation, or custody action is pending or contemplated by either of the parties and whether a GAL has already been appointed who could cross-assign here; or
- e. Seriousness of any allegation of drug or alcohol abuse.

B. SCOPE OF SERVICES

PROTOCOL 11-2

When a guardian *ad litem* is appointed, the court must carefully define the scope of services expected. Those shall not extend beyond the following:

- a. Limited preliminary investigation to ascertain the facts necessary to make a determination regarding the best custody and/or visitation plan for the children and parents;
- b. Report and recommendation to the court based upon the findings of the investigation. The report may be written or oral, as specified by the judge; and
- c. Advocating on behalf of the child's best interest at the final hearing.

COMMENT

It is not the role of the guardian *ad litem* to serve as counsel to either of the parties nor should the guardian *ad litem* ever mediate in these cases. Under no circumstances should the guardian *ad litem* serve the role as supervisor during either party's visits with the children

PROTOCOL 11-3

The appointment responsibilities of the guardian *ad litem* should terminate with the issuance of the final order in the case.

C. PAYMENT

PROTOCOL 11-4

Payment of the guardian *ad litem* shall be borne by the parties in a proportional amount, as the court may determine. Where the parties are indigent, guardian *ad litem* compensation shall be based upon the applicable fee schedule established by the supreme court of New Hampshire and paid by funds from the general fund subject to such limitations as established by administrative order of the district court.